



JEFFREY P. DOSS  
Lightfoot, Franklin & White LLC  
205-581-0773 direct  
205-581-0799 fax  
[jdoss@lightfootlaw.com](mailto:jdoss@lightfootlaw.com)

June 20, 2023

David J. Smith  
Clerk of Court  
U.S. Court of Appeals for the Eleventh Circuit  
56 Forsyth Street, N.W.  
Atlanta, Georgia 30303

Re: *Paul Eknes-Tucker, et al. v. Governor of the State of Alabama, et al.*  
Case No. 22-11707

Dear Mr. Smith:

Plaintiffs-Appellees submit this notice of supplemental authority.

On June 16, 2023, in *K.C. v. The Individual Members of the Medical Licensing Board of Indiana, et al.*, No. 1:23-CV-595, the U.S. District Court for the Southern District of Indiana granted the plaintiffs' motion for a preliminary injunction. A copy of the decision is attached ("Op.") and is available at 2023 WL 4054086.<sup>1</sup>

The district court considered a statute like Alabama Code § 26-26-4(a)(1)-(3). Indiana's statute "would prohibit physicians and other medical practitioners from 'knowingly provid[ing] gender transition procedures to a minor.'" (Op. at 4) (quoting S.E.A. 480 § 13(a)). Relevant here, "gender transition procedures" include "medical services that provide puberty blocking drugs" and "gender transition hormone therapy." *Id.* at 6 (quoting S.E.A. 480 § 5(a)(2)).

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<sup>1</sup> The State of Alabama participated by submitting an amicus curiae brief. (Op. at 34 n.9).

For its Equal Protection Clause analysis, the district court considered whether to apply intermediate scrutiny. *Id.* at 16. The plaintiffs argued that S.E.A. 480 triggers intermediate scrutiny because “sex is the determining factor as to whether a treatment is prohibited.” *Id.* The defendants – like the Appellants in our case – claimed that “S.E.A. 480 draws distinctions based on other factors, such as medical conditions and procedure, rather than based on sex.” *Id.* at 16-17

Relying on *Whitaker v. Kenosha Unified School District No. 1*, 858 F.3d 1034 (7th Cir. 2017), and *Brandt v. Rutledge*, 47 F.4th 661 (8th Cir. 2022), and distinguishing *Geduldig v. Aiello*, 417 U.S. 484 (1974), the district court held that intermediate scrutiny applies. (Op. at 17-21). Applying that standard, the district court – while acknowledging that the defendants had “identified legitimate reasons for regulation in this area” – concluded that “the designated evidence does not demonstrate, at least at this stage, that the extent of [S.E.A. 480] was closely tailored to uphold those interests.” *Id.* at 25; *see also id.* at 25-26 (distinguishing *Dobbs v. Jackson Women’s Health Org.*, 142 S. Ct. 2228 (2022)).

Thus, the district court found that the plaintiffs had shown a likelihood of success on the merits of their equal protection claim. *Id.* at 25.

Respectfully submitted,

/s/ Jeffrey P. Doss  
Jeffrey P. Doss  
*jdoss@lightfootlaw.com*  
LIGHTFOOT, FRANKLIN & WHITE LLC  
400 20th Street North  
Birmingham, Alabama 35203  
*Counsel for Private Plaintiffs-Appellees*

cc: All Counsel of Record (via CM/ECF)